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January 30, 2024

VIA EMAIL

Hon. Michael J. Roemer
 United States Magistrate Judge
 Western District of New York
 Robert H. Jackson United States Courthouse
 2 Niagara Square
 Buffalo, New York 14202

RE: *CFPB et al. v. StratFS LLC et al.*
Case 1:24-cv-00040-EAW-MJR

Dear Magistrate Judge Roemer:

The undersigned counsels respectfully request to appear remotely on behalf of Relief Defendants Strategic ESOT and Strategic ESOP (together, the “ESOT/ESOP Defendants”) at the preliminary injunction hearing scheduled for February 1-2, 2024.

On January 11, 2024, the Court entered the *Ex Parte Temporary Restraining Order with an Asset Freeze, Appointment of a Receiver, and Other Equitable Relief* (the “TRO”, Dkt. No. 12), *inter alia*, treating the ESOT/ESOP Defendants as Relief Defendants and Receivership Defendants (as defined in the TRO) and appointing Mr. Thomas W. McNamara as receiver (the “Receiver”).

On January 29, 2024, the Receiver filed the *Notice of Motion to Modify TRO to Remove Strategic ESOP and Strategic ESOT as Receivership Defendants and Relief Defendants* (the “Motion to Remove”, Dkt. No. 102),¹ requesting this Court to modify the TRO because the Receiver’s investigation revealed that neither of the ESOT/ESOP Defendants possess any assets of material value to the Receivership Estate. As such, the ESOT/ESOP Defendants assume that they will also be excluded from the preliminary injunction sought in this action, but that is not clear at this point. Further, the ESOT/ESOP Defendants remain “Relief Defendants” under the complaint filed in this action. The ESOT/ESOP Defendants remain parties to this action, and they have an interest in the TRO (and potentially the preliminary injunction) and in harm the TRO is causing to the ESOT/ESOP Defendants and the participants and beneficiaries thereof, all of whom are separate and independent from other defendants named in this action, by impairing the trustee’s (and company’s) ability to comply with his obligations pursuant to the underlying plan, ERISA, and the Internal Revenue Code.

Given the expedited timeline of these proceedings, the undersigned counsels are unable to participate in the hearing absent the ability to appear remotely. The logistical challenges of traveling to Buffalo, especially on short notice during winter, would impose significant costs,

¹ Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Motion to Remove.

Hon. Michael J. Roemer
United States Magistrate Judge
Western District of New York

- 2 -

which, at this time, the ESOT/ESOP Defendants do not have the ability to pay, and disrupt schedules, hindering fair representation of the ESOT/ESOP Defendants in these proceedings.

Counsel will not be presenting any witnesses or documents at the hearing, but may request that they be permitted to address the Court, if issues arise that implicate the ESOT/ESOP's interests.

Accordingly, undersigned counsels respectfully request this Court to permit them and the ESOT/ESOP Defendants (through the trustee) to attend the preliminary injunction hearing scheduled for February 1-2, 2024 remotely.

Dated: January 30, 2024

Respectfully submitted,

FAEGRE DRINKER BIDDLE & REATH LLP

/s/ Richard J. Bernard

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